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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 533

JAMES W. DUTTON, ET AL.,
Appellants,

v.

J. MILLARD TAWES, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF MARYLAND,
Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND

APPELLANTS' BRIEF OPPOSING APPELLEE'S MOTION TO DISMISS OR AFFIRM

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The appellees have moved to dismiss the appeal or affirm the judgment of the court below on the grounds (a) that the federal question was not properly raised and preserved below (b) that the case is not within the appeal jurisdiction of this Court and (c) that the appeal does not present any substantial federal questions.

The motion lacks merit. Constitutional questions were raised in the pleadings and in the arguments before the Circuit Court of Baltimore City and the Court of Appeals of Maryland. The ruling by the Court of Appeals that the

state statute in question is constitutional clearly brought the appeal within 28 U.S.C. Section 1257 (2). The federal questions involved are not only substantial, they are of great magnitude. They involve voters being deprived of equal protection of the laws, the transfer of powers from one state to another, the trial in one state of crimes allegedly committed in another state, etc.

I. The Federal Questions Were Properly Raised and Preserved Below.

The fact that the constitutional questions were properly raised and ruled upon below is shown on pages 15 and 16 of the Appellants' Jurisdictional Statement, Appendix A, wherein the opinion of the Court of Appeals of Maryland stated:

> "The bill also prayed declarations (1) that the text of Ch. 269 had not been published prior to the election as required by Sec. 5 of Art. XVI of the Maryland Constitution and Code (1957), Art. 33, Sec. 170, and therefore the vote on the proposed law was void, and (2) *that the Act is unconstitutional* because (a) it authorizes a joint commission of Marylanders and Virginians to regulate and police the conduct of Marylanders on the Maryland owned Potomac River; (b) it empowers Virginia courts to try Maryland citizens for the commission of crimes on the Potomac River; (c) it delegates to the Joint Commission the legislative power to reduce punishment for criminal offenses on the Potomac River; (d) it usurps the power of future legislatures by binding them to make annual appropriations of not less than $50,000 for the Joint Commission; (e) it abdicates the Legislature's power to pass laws relating to fish, crabs, oysters and clams in the Potomac River after December 1, 1958; and (f) the title is deficient.
>
> "Judge Sodaro held the Act to have been duly approved by the voters and to be *constitutional*." (Emphasis added.)

II. This Court Has Jurisdiction.

As shown above, the questions concerning the constitutionality of the state statute were raised below. The state court ruled in favor of its validity, as shown on page 30 of the Appellants' Jurisdictional Statement, Appendix A:

> "The decree appealed from, to the extent that it held that *Ch. 269 of the Acts of 1959 was*, on its face, *a constitutional enactment* which was validly approved and ratified by the voters on November 8, 1960, and its dismissal of the Bill is affirmed." (Emphasis added.)

This Court therefore has jurisdiction under 28 U.S.C. Section 1257 (2).

III. Federal Questions Are Substantial.

This case involves not one, but several substantial federal questions, as set forth on pages 8-14 of the Jurisdictional Statement.

Since the case is within the appellate jurisdiction of this Court and it presents substantial federal questions, **Appellee's motion should be denied.**

Respectfully submitted,

HYMAN A. PRESSMAN,

Counsel for Appellants.